IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 7009 of 2007(F)

CRMP.7481/2007 of C.J.M.,THRISSUR
CRIME NO.476/07 OF THRISSUR EAST POLICE STATION

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PETITIONER/ACCUSED A5

N.M.MUHAMMED, AGED 67 YEARS, S/O. MAMMU,
NADUVILAPARAMBIL HOUSE, NO.44/2829,
EACHARANGATT LANE, PASEBHIMENI ROAD, KALOOR,
KOCHI.

BY ADV. SRI.JOSY ANTONY

RESPONDENTS: COMPLAINANTS

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1. DEPUTY SUPERINTENDENT OF POLICE,
THRISSUR.

2. STATE OF KERALA, REP. BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7009 OF 2007

Dated this the 21st day of November, 2007

ORDER

Application for regular bail. The petitioner is the 5th accused. He faces allegations for offences punishable, inter alia, under Secs.420 and 468 of the IPC. The crux of the allegations is that accused 1 and 2 applied to the Thrissur District Unit of the Kerala State Co-operative Bank for a loan of about Rs.275 lakhs. A person, who described himself to be the 3rd accused, was allegedly offered as a surety. There is no such person. He is a fake person. He allegedly executed a Power-of-Attorney in favour of the 1st accused and the 1st accused executed the surety documents on behalf of the 3rd accused on the strength of the said Power-of-Attorney. The documents were produced to show that the 3rd accused had rights over an item of property. Such documents were all

forged. All the connected documents were allegedly forged. These documents, according to the prosecution, were arranged on the basis of a conspiracy between the accused persons. The petitioner is allegedly an employee of the 4th accused. The 4th accused has an important role in the conspiracy. The petitioner/the 5th accused, as an employee of the 4th accused, had allegedly contacted accused 6 and 7 who had ensured that the forged documents were made available. No such documents were registered at the Registrar's office; but it was made to appear that such documents are there.

2. The petitioner was arrested on 28/10/07. He continues in custody from that date. Investigation is not complete. Final report has not been filed yet.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He is only a Peon in the establishment owned and run by the 4th accused. He has absolutely no contumacious responsibility for the alleged crimes. He was earlier a fruit vendor. He was subsequently employed in the establishment of the 4th accused. The theory of the complainant – bank is not worthy of acceptance. It is idle to assume that without the connivance of the bank officials, such false documents could be produced and the bank could be

persuaded to advance such a huge amount on the strength of such documents. In these circumstances, the petitioner, who has been in custody from 28/10/07, may now be enlarged on bail. The learned counsel for the petitioner points out that accused 6 and 7 have already been enlarged on bail as per the orders of this Court. The learned counsel further points out that on medical ground also the petitioner/the 5th accused is entitled to be enlarged on bail.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the investigation is not complete. The 4th accused – the employer of the petitioner, has not been arrested so far. The 3rd accused is shown to be a fake person. The person, who impersonated as the 3rd accused, has not been identified or arrested so far. The 2nd accused – the brother-in-law of the 1st accused and Director of the loanee Bank, has not been arrested. Investigation is at a crucial and sensitive stage. The release of the petitioner on bail at this stage would hamper the smooth course of the investigation, submits the learned Public Prosecutor. The fact that accused 6 and 7 have been enlarged on bail after their continued detention in custody for a long period of time is not a reason to justify the claim of the petitioner who has been in custody only from

28/10/07. The Investigator may be granted a reasonable further time, in such a case of crucial significance, to complete the investigation. The prosecution does not hide the fact that there may be other persons also responsible for the commission of the crime. Investigation is being conducted into all relevant aspects and all those who are found to be contumaciously and culpably responsible shall be brought to book by the Investigator. The mere fact that some others may also be involved in the crime cannot also justify the prayer for grant of regular bail by the petitioner now, submits learned Public Prosecutor.

5. I have considered all the relevant inputs. At this early stage of the investigation, I shall not embark on a detailed discussion on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am satisfied that the petitioner does not deserve to be enlarged on bail at this stage. I take particular note of the fact that the petitioner's employer – the 4th accused, has not been arrested so far. I take note of the further circumstance that the 3rd accused is found to be a fake person and the person who pretended himself to be the 3rd accused and executed the Power-of-Attorney in favour of the 1st accused has not been traced so far. The 2nd accused who had applied for anticipatory bail has not so far

surrendered before the Investigator also, I do take note of. I am satisfied, in these circumstances, that the petitioner does not deserve to be enlarged on bail at this early stage.

6. This bail application is accordingly dismissed. But I may hasten to observe that the petitioner shall be at liberty to move this Court for bail again at a later stage of the investigation not, at any rate, prior to 5/12/07. The Investigator shall, in the meantime, make every endeavour to complete the investigation.

7. The learned counsel for the petitioner prays that the prison authorities may be directed to give necessary medical aid to the petitioner. No specific directions appear to be necessary. Needless to say that the claim of the petitioner for medical aid will have to be dealt with in accordance with law.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge